

IRMGARD S. KING

FEBRUARY 21, 1956.—Committed to the Committee of the Whole House and ordered to be printed

Mr. LANE, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H. R. 7487]

The Committee on the Judiciary, to whom was referred the bill (H. R. 7487) for the relief of Irmgard S. King, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to waive sections 15 to 20, inclusive, of the Federal Employees' Compensation Act in favor of Irmgard S. King, of Colton, Calif., so as to permit the filing and consideration of her claim for compensation benefits under the remaining provisions of the Federal Employees' Compensation Act arising out of the death of her husband on November 3, 1948, while serving on active duty as an officer of the United States Air Force.

STATEMENT OF FACTS

Mrs. King is the widow of an Air Force Reserve officer who drowned on November 3, 1948, while on active duty with the Air Force. Her claim, filed on January 17, 1955, was rejected by the Bureau of Employees' Compensation because it had not been filed within the 5-year statutory period. As a result the merits of Mrs. King's claim have never been passed upon.

After a full consideration of the facts of this claim the committee is of the opinion that Mrs. King should be given the opportunity of presenting the matter to the Bureau of Employees' Compensation for a decision on the merits. As disclosed by the affidavit appended to this report, Mrs. King was not aware that she might receive benefits under the Federal Employees' Compensation Act until she was in-

formed of this by the person making the affidavit. Under the circumstances the committee finds the bill to be meritorious, and recommends its favorable consideration

AFFIDAVIT

I, Patricia A. Middaugh, knowing the following facts to be true, do make the following statement:

That on or about November 15, 1954, Mrs. Irmgard S. King and I did discuss benefits due dependents of deceased military personnel. Mrs. King expressed surprise and astonishment when she learned of the Federal Employees' Compensation Act as being the basis for payment of benefits to me as the widow of an officer of the Reserve forces of the United States. On a subsequent visit to Norton Air Force Base, I discussed with Mr. Albert J. Spencer, personal affairs counselor, Mrs. King's situation. After hearing the facts, Mr. Spencer agreed to meet Mrs. King to discuss the possible application of the Federal Employees' Compensation Act to her case.

PATRICIA A. MIDDAGH,
Rialto, Calif.

Subscribed and sworn to before me, this 22d day of December 1955.

[SEAL]

RICHARD CAHN,

Notary public in and for the County of San Bernardino, State of California.

My commission expires May 4, 1958.

AFFIDAVIT

I, Albert J. Spencer, in connection with the legislation filed in behalf of Mrs. Irmgard S. King for the relief from the provisions contained in section 20 of the Federal Employees' Compensation Act of September 17, 1916, as amended, knowing the following facts to be true do make the following statement:

That on December 16, 1954, Mrs. Irmgard S. King was counseled by me regarding the benefits extended under provisions of the Federal Employees' Compensation Act of September 17, 1916, as amended, to beneficiaries of deceased members of the Reserve components of the Armed Forces of the United States. At that time, Mrs. King did state that her first knowledge of the existence of veteran came as a result of conversation with Mrs. Patricia A. Middaugh, widow of the late 2d Lt. Barrie D. Middaugh, USAF Reserve.

ALBERT J. SPENCER,
*Personal Affairs Counselor,
Personal Affairs Section.*

Subscribed and sworn to before me this 22d day of December 1955.

[SEAL]

RICHARD CAHN,

Notary Public, in and for the County of San Bernardino, State of California.

My commission expires May 4, 1958.

COLTON, CALIF., March 21, 1955.

HON. HARRY R. SHEPPARD,
*House of Representatives,
Washington, D. C.*

DEAR MR. SHEPPARD: I want to thank you again for the service you rendered me in 1950. At present I am receiving Veterans' Administration compensation in the amount of \$96.80 for the service-connected death of my husband 1st Lt. Keith R. King, AO2075009, USAF Reserve, deceased November 3, 1948, for myself and our child Susan Angela King. The assistance you rendered in establishing my claim will always be remembered.

Recently, the husband of a close friend of mine, Mrs. Patricia Middaugh lost her husband under similar circumstances. Assistance was extended her by the Personal Affairs Office, Norton Air Force Base in processing her claim for com-

pensation. The Personal Affairs Office informed her of benefits under Veterans' Administration and Federal Employees' Compensation Acts. As the benefits were substantially greater under Federal employees' compensation, she elected to receive those benefits and is now receiving 55 percent of her late husband's pay and allowances, which is a great deal more than the \$96.80 that I am receiving. She felt that my benefits should also be under this act.

It was only in my conversations with Mrs. Middaugh that I learned of the existence of the Federal Employees' Compensation Act and that the benefits extend to Reserve officers of the Armed Forces and their dependents.

I visited the Personal Affairs Office at Norton Air Force Base where information regarding extent of coverage of the act was explained to me and I was assisted in filing my claim for benefits under this act.

Recently I received a letter from the Bureau of Employees' Compensation, United States Department of Labor, Washington, D. C., that my claim for benefits had been disallowed because of my failure to file a claim within 5 years of date of death of my husband.

I am in the process of appealing my claim through the Personal Affairs Office, Norton Air Force Base, and I would like to take advantage of your kind offer of further assistance. Any action which you might take on my behalf would be appreciated. I am inclosing copies of all action taken on my claim for your information.

Sincerely,

MRS. IRMGARD S. KING.

UNITED STATES DEPARTMENT OF LABOR EMPLOYEES' COMPENSATION APPEALS
BOARD

Docket No. 55-419—BEC file No. X-946493

In the Matter of the Application for Review of the Decision of the Bureau of Employees' Compensation Under the Federal Employees' Compensation Act, as Amended (or Under an Extension of such Act), of Irmgard S. King, Appellant, Keith Rollo King, Deceased Officer; Department of the Air Force (McChord Air Force Base, McChord Field, Washington, D. C.), Employing Establishment

MEMORANDUM IN JUSTIFICATION OF THE BUREAU'S DECISION

The Director of the Bureau of Employees' Compensation, Department of Labor, respectfully submits this memorandum in justification of the decision of the Bureau in the within case:

1. The appellant has claimed compensation for the death of Keith Rollo King, Air Force reservist, who died while serving on active duty on November 3, 1948. Claim for death benefits was filed on January 17, 1955.

2. By compensation order dated January 26, 1955, the Director, Bureau of Employees' Compensation, rejected the appellant's claim for the reason that it was not timely filed in accordance with the provisions of the Federal Employees' Compensation Act. By letter dated March 4, 1955, the Bureau of Employees' Compensation denied modification of the previous compensation order.

3. It is respectfully submitted that the provisions of the Federal Employees' Compensation Act concerning the maximum period of 5 years within which claims must be filed after injury or death are mandatory and may not be waived by the Bureau. It is further submitted that the Director, Bureau of Employees' Compensation, is without authority to adjudicate the merits of appellant's case since her claim was not filed within the maximum of 5 years prescribed by the statute.

4. The decision of the Director is consistent with the law and facts of this case and should be sustained.

5. Oral argument is waived on behalf of the Director.

6. The case record consisting of 19 numbered pages is attached.

Respectfully submitted.

WM. McCAULEY,

Director, Bureau of Employees' Compensation.

Dated April 29, 1955.

U. S. DEPARTMENT OF LABOR

EMPLOYEES' COMPENSATION APPEALS BOARD

Docket No. 55-419. Date filed, March 30, 1955

APPLICATION FOR REVIEW

1. Name of person filing appeal: Mrs. Irmgard S. King.
2. Address: 860 Edgehill Drive, Colton, Calif.
3. Name of injured or deceased employee: Keith R. King, AO2075009, USAF Reserve.
4. Employing establishment: Department of the Air Force.
5. Date of injury: November 3, 1948. 6. Place of injury: Neah Bay, Wash.
7. Number of the case file in Bureau of Employees' Compensation: X-946493.
8. Date of decision you are appealing: January 26, 1955.
9. Request is hereby made for review of the aforesaid decision issued by the Bureau of Employees' Compensation, under the Federal Employees' Compensation Act of September 7, 1916, as amended, upon the following ground or grounds: (State the specific reasons for the appeal in accordance with par. 4 of the general instructions attached hereto.)

Section 20 of the Federal Employees' Compensation Act as amended and extended provides as follows:

"* * * Failure to give notice of injury or to file claim for compensation for disability or death within the time and in the manner prescribed by this Act shall not bar the claim of any person thereunder if such claim is filed within five years after the injury or death and if the Administrator shall find (1) that such failure was due to circumstances beyond the control of the person claiming benefits, or (2) that such person has shown sufficient cause or reason in explanation thereof and material prejudice to the interest of the United States has not resulted from such failure; and upon such finding the Administrator may waive compliance with the applicable provisions of the Act."

It is felt that the Administrator did not exercise his discretion and "waive compliance with applicable provisions of the act" as provided in item (2) of section 20 of the Federal Employees' Compensation Act based on the circumstances surrounding the filing of this claim. The facts are contained in a notarized letter sent to the Bureau of Employees' Compensation on February 7, 1955.

Failure to file a timely claim was due to circumstances beyond my control and in no way prejudiced the interest of the United States.

10. You are hereby advised that Hon. Harry R. Sheppard, Member of Congress, House of Representatives, Washington, D. C., is my duly authorized representative for the purpose of this appeal.

March 28, 1955.

IRMGARD S. KING.

UNITED STATES DEPARTMENT OF LABOR

EMPLOYEES' COMPENSATION APPEALS BOARD

In the Matter of Irmgard S. King, Claiming as Widow of Keith Rollo King, and Department of the Air Force, McChord Air Force Base, Wash.

Docket No. 55-419; submitted on the record: decided May 25, 1955

DECISION AND ORDER

Before John E. Lawyer, Grace McGerr, Willard H. Shaffer.

The Bureau of Employees' Compensation entered a compensation order in the above entitled matter on January 26, 1955, rejecting appellant's claim for compensation benefits arising out of the death of her husband in November 1948, on the ground that the claim was not timely filed in accordance with the provisions of the Federal Employees' Compensation Act. The correctness of this order is the only issue presented on this appeal.

According to the record, Lt. Keith R. King died on November 3, 1948, while serving on active duty as an officer of the United States Air Force in the vicinity

of Neah Bay, Wash. No claim was filed for benefits provided by the act until January 17, 1955. Appellant contends that she had no knowledge of the Federal Employees' Compensation Act prior to January 1955. Assuming that this contention is true in its entirety, the fact remains that the provisions of section 20 of the act provide a maximum period of 5 years from the date of death during which a claim may be filed, and as the Board has so frequently held, this is a mandatory requirement which cannot be waived by the Bureau of Employees' Compensation or by this Board.¹ It is a prerequisite of the law itself and can only be waived or extended through legislative action. In view of the express and specific nature of these provisions, the Board must affirm the order appealed from.

ORDER

Upon the findings of the Board and the entire case record filed by the Bureau of Employees' Compensation in accordance with section 501.3 (a), and pursuant to section 501.4 of the Regulations Governing Appeals (20 C. F. R., pts. 501, 502) the Employees' Compensation Appeals Board hereby orders that:

The compensation order issued by the Director, Bureau of Employees' Compensation, dated January 26, 1955, be and it hereby is affirmed.

It is further ordered that the case record be returned to the Bureau.

Dated, Washington, D. C., May 25, 1955.

JOHN E. LAWYER, *Chairman.*

GRACE MCGERR, *Member.*

WILLARD H. SHAFFER, *Member.*

DEPARTMENT OF LABOR,

OFFICE OF THE SECRETARY,

Washington, October 24, 1955.

HON. EMANUEL CELLER,

Chairman, Committee on the Judiciary,

House of Representatives, Washington, D. C.

DEAR CONGRESSMAN CELLER: This is in further reply to your recent letter requesting my comments on H. R. 7487, a bill for the relief of Mrs. Irmgard S. King.

This bill, if enacted, would waive the time limitation of the Federal Employees' Compensation Act (39 Stat. 742, as amended), in favor of Mrs. Irmgard S. King with respect to the filing of notice of injury and claim for compensation. However, no benefits would accrue prior to enactment of the bill.

The records of the Bureau of Employees' Compensation indicate that Mrs. King is the widow of an officer who drowned on November 3, 1948, while on active duty with the United States Air Force. However, she did not file a claim for compensation until January 17, 1955. Since her claim was not filed within the maximum statutory period of 5 years, the Bureau of Employees' Compensation rejected it, and this decision was upheld by the Employees' Compensation Appeals Board. Therefore the merits of the case have not been considered.

Due to the fact that Mrs. King's late husband was a Reserve officer on active peacetime duty with the Armed Forces at the time of his death, she could have sought benefits either from the Veterans' Administration or under the Federal Employees' Compensation Act. It is my understanding that she applied for, and was awarded, veterans' benefits which she is currently receiving. Therefore, Mrs. King has not been without compensation. Rather, she has been receiving one type of benefit which the Congress has heretofore deemed adequate. At the time of her husband's death, the veteran's death benefits were pecuniarily more advantageous than those of the Compensation Act, though the latter were raised by the 1949 amendments to the act.

I would not favor the enactment of a proposal which would provide preferential treatment for a single individual in a group of persons similarly situated unless the Congress should find extenuating circumstances which would justify waiving the time limitations in this particular case.

The Bureau of the Budget advises that it has no objection to the submission of this report.

Sincerely yours,

JAMES P. MITCHELL,
Secretary of Labor.

¹ *In the Matter of Eugene W. Broadway*, docket No. 51-154.

